

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MELVIN J. HOWARD,

3:13-cv-01111-ST

ORDER

Plaintiff,

v.

MAXIMUS, INC., d/b/a MAXIMUS,  
CANADA, INC., d/b/a THEMIS  
PROGRAM MANAGEMENT &  
CONSULTING LTD.; STEVE  
KITCHER, in his individual  
capacity; and JOANNE PLATT,  
in her individual capacity,

Defendants.

MELVIN J. HOWARD  
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Suite 51  
Fairview, OR 97024  
(503) 317-409

Plaintiff, *Pro Se*

**JOANNA T. PERINI-ABBOTT**  
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Maximus, Inc.

**BROWN, Judge.**

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (F&R) (#42) on May 6, 2014, in which she recommends the Court grant Defendant Maximus, Inc.'s Motion (#36) to Dismiss Plaintiff's First Amended Complaint. Plaintiff filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

**I. Portions of the Findings and Recommendation to which Plaintiff Does Not Object**

Plaintiff does not object to the portions of the Findings and Recommendation in which the Magistrate Judge dismisses with prejudice Plaintiff's "Piercing the Corporate Veil" claim.<sup>1</sup> The Court, therefore, is relieved of its obligation to review the record *de novo* as to these portions of the Findings and

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<sup>1</sup> This is the Seventh Cause of Action in Plaintiff's First Amended Complaint. As noted by the Magistrate Judge, the First Amended Complaint does not contain a "Sixth Cause of Action".

Recommendation. See *Shiny Rock Min. Corp. v. U.S.*, 825 F.2d 216, 218. (9<sup>th</sup> Cir. 1987). See also *Lorin Corp. v. Goto & Co.*, 700 F.2d 1202, 1206 (8<sup>th</sup> Cir. 1983).

Having reviewed the legal principles *de novo*, the Court does not find any error in these portions of the Findings and Recommendation.

## **II. Portions of the Findings and Recommendation to which Plaintiff Objects**

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

### **A. Plaintiff's First through Fifth Claims**

Plaintiff appears to object to the Magistrate Judge's Findings and Recommendation in which the Magistrate Judge concludes Plaintiff's First through Fifth "Causes of Action" should be dismissed with prejudice and reiterates the arguments contained in his Opposition (#40) to Defendant's Motion to Dismiss Amended Complaint. This Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify these portions of the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de*

novo and does not find any error in the Magistrate Judge's Findings and Recommendation with respect to Plaintiff's First through Fifth Causes of Action.

**B. Failure to Join a Necessary Party**

In the Findings and Recommendation the Magistrate Judge also addresses Defendant's alternative argument that Plaintiff's claims should be dismissed for failure to join required parties. The Magistrate Judge concludes "even if [Plaintiff] stated a viable claim, this case should be dismissed pursuant to FRCP 12(b)(7)." F&R at 13. Although the Court need not address Defendant's alternative argument because the Court concludes Plaintiff's claims should be dismissed on other grounds as recommended by the Magistrate Judge, the Court does not find any error in this portion of the F&R.

**CONCLUSION**

The Court **ADOPTS** that portion of Magistrate Judge Stewart's Findings and Recommendation (#42) in which she recommends the Court **GRANT** Defendant Maximus Inc.'s Motion (#36) to Dismiss

Plaintiff's First Amended Complaint and **DISMISSES** this matter  
**with prejudice.**

IT IS SO ORDERED.

DATED this 6th day of August, 2014.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge